

# Rule Changes Effective July 1, 2000

## CIRCUIT RULE 5-2

### NUMBER OF COPIES

The parties shall file an original and four copies of petitions, responses to petitions and any supporting papers and appendices filed pursuant to Federal Rule of Appellate Procedure 5. (*New Rule 7/1/2000*)

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## CIRCUIT RULE 21-2

### Extraordinary Writs FORMAT, NUMBER OF COPIES

(a) Petitions for writs of mandamus, prohibition or other extraordinary relief directed to a district judge, magistrate judge, or bankruptcy judge shall bear the title of the appropriate court and shall not bear the name of the judge as respondent in the caption. Petitions shall include in the caption: the name of each petitioner; the name of the appropriate court as respondent; and the name of each real party in interest. Other petitions for extraordinary writs shall include in the caption: the name of each petitioner; and the name of each appropriate adverse party below as respondent. (*Rev. 7/1/2000*)

(b) The parties shall file an original and four copies of petitions; responses to petitions; and any supporting papers and appendices. (*New Section 7/1/2000*)

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## CIRCUIT ADVISORY COMMITTEE NOTE TO RULES 21-1 to 21-4

*A petition for writ of mandamus, writ of prohibition or other extraordinary relief is processed by the clerk and motions attorneys in the same fashion as a motion. If the panel does not believe that the petition makes a prima facie showing justifying issuance of the writ, it will deny the petition forthwith. That denial is not regarded as a decision on the merits of the claims. In other instances, the panel will direct that an answer and reply may be filed within specified times. The panel may also issue a stay or injunction pending further consideration of the petition. After receipt of the answer and reply, or expiration of the times set therefor, the matter is then forwarded to a new motions panel unless the first panel directs otherwise. The panel may grant or deny the petition or set it for oral argument. If the panel decides to set the petition for argument, it may be calendared before a regular panel of the Court or before the motions panel. (Rev. 7/1/2000)*

*In emergency circumstances, an individual judge may grant temporary relief to permit a motions panel to consider the petition, may decline to act, or may order that an answer be filed. If the judge determines that immediate action on the merits is necessary, the judge will contact the members of the court currently sitting as a motions panel until two or more judges can consider whether to grant or deny the petition. Except in extreme emergencies, the judges will not grant a petition without calling for an answer to the petition. (Rev. 7/1/2000)*

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## CIRCUIT RULE 25-4

### CALENDARED CASES

After a case has been scheduled for oral argument, has been argued, is under submission or has been decided, all papers submitted to the court for filing must include the latest of the date of argument, submission or decision. If known, the names of the panel members shall be included. This information shall be included on the initial page and/or cover, if any, immediately below the case number. *(New Rule 7/1/2000)*

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## CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 27-1

*[There are no changes to Nos. 1-5. No. 6 is the new Note.]*

*(6) Request to Amend the Briefing Schedule: A party may request modification of the briefing schedule in conjunction with any request for other relief. The request for modification of the briefing schedule should be included in the legend as well as the body of the motion for other relief. (New Note 7/1/2000)*

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## CIRCUIT RULE 27-3

### EMERGENCY AND URGENT MOTIONS

(a) Emergency Motions

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(b) Urgent Motions

If a movant certifies that to avoid irreparable harm, action is needed by a specific date or event but not within 21 days as in (a) above, the motion shall be governed by the following requirements.

- (1) before filing the motion, the movant shall notify opposing counsel and serve the motion at the earliest possible time;
- (2) the movant shall file the motion with the Clerk in San Francisco; and
- (3) any motion under this section shall have a cover page bearing the legend “Urgent Motion Under Circuit Rule 27-3(b),” the caption of the case, and a statement immediately below the title of the motion that states the date or event by which action is necessary; and
- (4) if the relief sought in the motion was available in the district court, Bankruptcy Appellate Panel or agency, the motion shall state whether all grounds advanced in support thereof in this court were submitted to the district court, panel or agency, and if not, why the motion should not be remanded or denied.

The motion shall otherwise comport with Federal Rule of Appellate Procedure 27. *(Urgent Motions, New - 7/1/2000)*

[Cross Reference: Federal Rule of Appellate Procedure 8 and 25; Circuit Rule 27-5. ] *(New 7/1/2000)*

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## **CIRCUIT RULE 27-10**

### **MOTIONS FOR RECONSIDERATION**

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A party may file only one motion for clarification, reconsideration or rehearing of an order entered by a motions panel. (Rev. 7/1/2000)

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## **CIRCUIT RULE 28-1**

### **BRIEFS, APPLICABLE RULES**

(a) \* \* \* \*

(b) Parties must not append or incorporate by reference briefs submitted to the district court or agency or this Court in a prior appeal, or refer this Court to such briefs for the arguments on the merits of the appeal. (*New Rule 7/1/2000*)

(c) \* \* \* \*

Cross Reference: Federal Rule of Appellate Procedure 28(i). (*New 7/1/2000*)

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## ***CIRCUIT ADVISORY COMMITTEE***

### ***NOTE TO RULE 28-1***

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*Briefing in cross-appeals is governed by Federal Rule of Appellate Procedure 28(h). Accordingly, the party that files the first notice of appeal is deemed the appellant and files the opening brief. The party that files the second notice of appeal is deemed the appellee and files a combined brief that answers the appeal and opens as to the cross-appeal. Appellant then files a combined brief that answers the cross-appeal and may reply as to the appeal. Appellee may file a reply brief pertaining to the cross-appeal. Litigants are reminded that under Federal Rule of Appellate Procedure 28(h), they may move to alter the sequence of briefing if the latter-filed notice of appeal raises a more complex or broader issue than that raised by the earlier notice of appeal, or when otherwise appropriate. (Rev. 7/1/2000)*

*Pursuant to Federal Rule of Appellate Procedure 32(a)(2), the first brief shall have a blue cover; the second and third briefs shall have red covers; and the final brief shall have a gray cover. Federal Rule of Appellate Procedure 32(a)(7)'s length limitation for principal briefs applies to the first three briefs; Rule 32(a)(7)'s length limitation for reply briefs applies to the final brief. If a party contends that a lengthier brief is warranted, it may file a motion to enlarge the brief's size pursuant to Ninth Circuit Rule 32-2. (Rev. 7/1/2000)*

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## **CIRCUIT RULE 28-4**

### **EXTENSIONS OF TIME AND ENLARGEMENTS OF SIZE FOR CONSOLIDATED AND JOINT BRIEFING**

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Notice Procedure: If no previous extension of the filing deadline or enlargement of brief size has been obtained and the case has not been expedited, the court will grant a 21-day extension of time and an enlargement of five (5) pages, 1,400 words or 130 lines of monospaced text for a joint brief upon the filing of the notice at Appendix of Forms, No. 7 to these rules. (Rev. 7/1/2000)

If no previous extension of the filing deadline or enlargement of brief size has been obtained and the case has not been expedited, the court will grant a 21-day extension of time and an enlargement of five (5) pages, 1,400 words or 130 lines of monospaced text to a party filing a single response to a joint brief or multiple briefs upon the filing of the notice at Appendix of Forms, No. 7. Upon receipt of such a notice, a corresponding adjustment to the responsive brief's due date will be recorded on the docket. (Rev. 7/1/2000)

### ***CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 28-4***

*Rule 28-4 encourages separately represented parties to file a joint brief to avoid burdening the court with repetitive presentations of common facts and issues. Such joint briefing may require additional time and size. Accordingly, upon written notice, the court will grant a 21-day extension of time for filing a joint brief or a brief responding to multiple briefs. Similarly, upon written notice, the court will grant five (5) additional, double-spaced pages, 1,400 additional words, or 130 lines of monospaced text for filing a joint brief or a brief responding to a joint brief or to multiple briefs. A further enlargement of time or size may be granted upon written motion supported by a showing of good cause. (Rev. 7/1/2000)*

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## **CIRCUIT RULE 35-4**

### **FORMAT; NUMBER OF COPIES**

(a) Format/Length of Petition and Answer

The format and length of a petition for rehearing en banc and any answer shall be governed by Ninth Circuit Rule 40-1(a).

The petition or answer must be accompanied by the completed certificate of compliance found at Form 11. (New Rule 7/1/2000)

(b) Number of Copies

A petition for rehearing en banc shall be filed in an original and 50 copies.

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## CIRCUIT RULE 36-3

### CITATION OF UNPUBLISHED DISPOSITIONS OR ORDERS

- (a) Not Precedent: Unpublished dispositions and orders of this Court are not binding precedent, except when relevant under the doctrine of law of the case, res judicata, or collateral estoppel.
- (b) Citation: Unpublished dispositions and orders of this Court may not be cited to or by the courts of this circuit except in the following circumstances.
  - (i) They may be cited to this Court or to or by any other court in this circuit when relevant under the doctrine of law of the case, res judicata, or collateral estoppel.
  - (ii) They may be cited to this Court or by any other courts in this circuit for factual purposes, such as to show double jeopardy, sanctionable conduct, notice, entitlement to attorneys' fees, or the existence of a related case.
  - (iii) They may be cited to this Court in a request to publish a disposition or order made pursuant to Circuit Rule 36-4, or in a petition for panel rehearing or rehearing en banc, in order to demonstrate the existence of a conflict among opinions, dispositions, or orders.
- (c) Attach Copy: A copy of any cited unpublished disposition or order must be attached to the document in which it is cited, as an appendix. (New Rule 7/1/2000)

### **CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 36-3**

*Circuit Rule 36-3 has been adopted for a limited 30-month period, beginning July 1, 2000 and ending December 31, 2002. Litigants are invited to submit comments regarding the rule to the Clerk during the first 24 months of the trial period. After the rule has been in effect for 24 months, the Advisory Committee on Rules will study and report to the Court on the frequency with which unpublished dispositions are cited to the Court and on any problems or concerns associated with the rule. The Advisory Committee will also issue a recommendation on whether the rule should be made permanent. Unless, by December 31, 2002, the Court votes affirmatively to extend the rule, it will automatically expire on December 31, 2002 and the former version of Circuit Rule 36-3 will be reinstated. (New Note 7/1/2000)*

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## CIRCUIT RULE 40-1

### FORMAT; NUMBER OF COPIES

**[Previous text abrogated 1/1/99]**

- (a) Format/Length of Petition and Answer

The format of a petition for panel rehearing or rehearing en banc and any answer shall be governed by Federal Rule of Appellate Procedure 32(c)(2). The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text. An answer, when ordered by the Court, shall comply with the same length limitations as the petition.

If an unrepresented litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Federal Rule of Appellate Procedure 32.

The petition or answer must be accompanied by the completed certificate of compliance found at Form 11.  
(New Rule 7/1/2000 - Section A, above.)

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**CIRCUIT ADVISORY COMMITTEE**  
**NOTE TO RULE 47-1**

*If members of the bar or public have suggestions for new rules or amendments to the rules, such suggestions should be directed to the Clerk of Court. (New Note 7/1/2000)*

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**CIRCUIT RULE 47-2**

**ADVISORY COMMITTEE ON RULES**

(a) Function. Pursuant to 28 U.S.C. § 2077(b), the Chief Judge shall appoint an advisory committee on Ninth Circuit Court of Appeals rules and internal operating procedures. The committee shall generally provide a forum for ongoing study of the court's rules and internal operating procedures, including:

- (1) proposing rule changes and commenting on changes proposed by the court,
- (2) considering public comments, including comments from the bar, and
- (3) conducting periodic meetings with members of the bar throughout the circuit and reporting back to the committee and the Court the results and any recommendations arising from such meetings. (Rev. 7/1/2000)

(b) Membership. The Chief Judge shall appoint three judges, twelve practitioners and one member of a law faculty to service on the committee for three years. The attorney members shall be selected in a manner that seeks both representation of the various geographic areas in the circuit and the distinct types of litigation considered by the court. A member of the Lawyer Representatives Coordinating Committee (LRCC) shall be appointed to a two-year term on the rules committee. That member shall serve as a liaison between the LRCC and Advisory Rules Committee. In addition, if a member of the national Advisory Committee on Appellate Rules is appointed from within the jurisdiction of the Ninth Circuit, that member shall be invited to participate as an ex-officio voting member of the Advisory Rules Committee. (Rev. 7/2000)

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**Form 11. Certificate of Compliance Pursuant to Circuit Rules 35-4 and 40-1**

**Form Must be Signed by Attorney or Unrepresented Litigant  
and Attached to the Back of Each Copy of the Petition or Answer**

\_\_\_\_\_  
(signature block below)  
\_\_\_\_\_

I certify that pursuant to Circuit Rule 35-4 or 40-1, the attached petition for panel rehearing/petition for rehearing en banc/answer is: (check applicable option)

\_\_\_\_\_ Proportionately spaced, has a typeface of 14 points or more and contains \_\_\_\_\_ words (petitions and answers must not exceed 4,200 words).

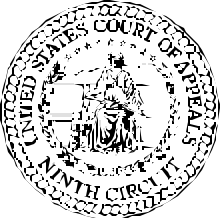
**or**

\_\_\_\_\_ Monospaced, has 10.5 or fewer characters per inch and contains \_\_\_\_\_ words or \_\_\_\_\_ lines of text (petitions and answers must not exceed 4,200 words or 390 lines of text).

**or**

\_\_\_\_\_ In compliance with Fed. R. App. 32(c) and does not exceed 15 pages.

\_\_\_\_\_  
Signature of Attorney or  
Unrepresented Litigant


**Form 6. Civil Appeals Docketing Statement**
**USCA DOCKET # (IF KNOWN)**

**UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT  
CIVIL APPEALS DOCKETING STATEMENT**

PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

<b>TITLE IN FULL:</b>	DISTRICT: _____ JUDGE: _____	
	DISTRICT COURT NUMBER: _____	
	DATE NOTICE OF APPEAL FILED: _____	IS THIS A CROSS-APPEAL? <u>9</u> YES
	IF THIS MATTER HAS BEEN BEFORE THIS COURT PREVIOUSLY, PLEASE PROVIDE THE DOCKET NUMBER AND CITATION (IF ANY): _____	
<b>BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW:</b>		
<b>PRINCIPAL ISSUES PROPOSED TO BE RAISED ON APPEAL:</b>		
<b>PLEASE IDENTIFY ANY OTHER LEGAL PROCEEDING THAT MAY HAVE A BEARING ON THIS CASE (INCLUDE PENDING DISTRICT COURT POST-JUDGMENT MOTIONS):</b>		
<b>DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING:</b> <u>9</u> Possibility of settlement <u>9</u> Likelihood that intervening precedent will control outcome of appeal <u>9</u> Likelihood of a motion to expedite or to stay the appeal, or other procedural matters (Specify) _____ <u>9</u> Any other information relevant to the inclusion of this case in the Mediation Program _____ <u>9</u> Possibility parties would stipulate to binding award by Appellate Commissioner in lieu of submission to judges		

# LOWER COURT INFORMATION

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JURISDICTION		DISTRICT COURT DISPOSITION	
FEDERAL	APPELLATE	TYPE OF JUDGMENT/ORDER APPEALED	RELIEF
<p><u>9</u> FEDERAL QUESTION</p> <p><u>9</u> DIVERSITY</p> <p><u>9</u> OTHER (SPECIFY):</p>	<p><u>9</u> FINAL DECISION OF DISTRICT COURT</p> <p><u>9</u> INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT</p> <p><u>9</u> INTERLOCUTORY ORDER CERTIFIED BY DISTRICT JUDGE (SPECIFY):</p> <p><u>9</u> OTHER (SPECIFY):</p>	<p><u>9</u> DEFAULT JUDGMENT</p> <p><u>9</u> DISMISSAL/JURISDICTION</p> <p><u>9</u> DISMISSAL/MERITS</p> <p><u>9</u> SUMMARY JUDGMENT</p> <p><u>9</u> JUDGMENT/COURT DECISION</p> <p><u>9</u> JUDGMENT/JURY VERDICT</p> <p><u>9</u> DECLARATORY JUDGMENT</p> <p><u>9</u> JUDGMENT AS A MATTER OF LAW</p> <p><u>9</u> OTHER (SPECIFY):</p>	<p><u>9</u> DAMAGES: SOUGHT \$ _____ AWARDED \$ _____</p> <p><u>9</u> INJUNCTIONS:</p> <p><u>9</u> PRELIMINARY</p> <p><u>9</u> PERMANENT</p> <p><u>9</u> GRANTED</p> <p><u>9</u> DENIED</p> <p><u>9</u> ATTORNEY FEES: SOUGHT \$ _____ AWARDED \$ _____</p> <p><u>9</u> PENDING</p> <p><u>9</u> COSTS: \$ _____</p>

## CERTIFICATION OF COUNSEL

### I CERTIFY THAT:

1. COPIES OF ORDER/JUDGMENT APPEALED FROM ARE ATTACHED.
2. A CURRENT SERVICE LIST OR REPRESENTATION STATEMENT WITH TELEPHONE AND FAX NUMBERS IS ATTACHED (SEE 9TH CIR. RULE 3-2).
3. A COPY OF THIS CIVIL APPEALS DOCKETING STATEMENT WAS SERVED IN COMPLIANCE WITH FRAP 25.
4. I UNDERSTAND THAT FAILURE TO COMPLY WITH THESE FILING REQUIREMENTS MAY RESULT IN SANCTIONS, INCLUDING DISMISSAL OF THIS APPEAL.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## COUNSEL WHO COMPLETED THIS FORM

NAME:

FIRM:

ADDRESS:

E-MAIL:

TELEPHONE:

FAX:

**×THIS DOCUMENT SHOULD BE FILED IN THE DISTRICT COURT WITH THE NOTICE OF APPEAL×  
×IF FILED LATE, IT SHOULD BE FILED DIRECTLY WITH THE U.S. COURT OF APPEALS×**